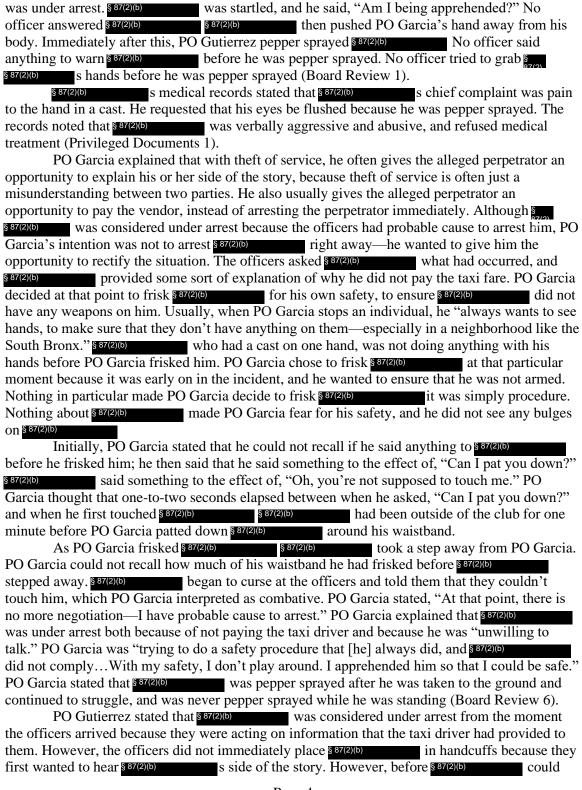
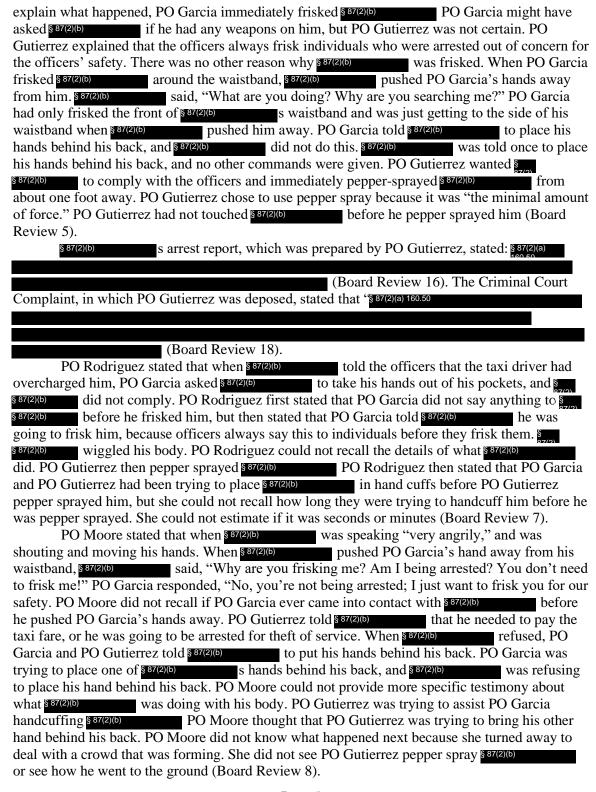
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	V	Force		Discourt.		U.S.
Erin Sweeney		Squad #11	201601314		Abuse		O.L.	⊸	Injury
•		•		匚				_	
Incident Date(s)		Location of Incident:		P	recinct:	18	Mo. SOL		EO SOL
Saturday, 02/13/2016 11:30 PM		26 Bruckner Boulevard	<u></u>		40	8/	/13/2017	8	/13/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	Rece	eived at CCl	RB	
Sun, 02/14/2016 4:10 PM		CCRB	Call Processing System		Sun, 02/14	/2010	6 4:10 PM		
Complainant/Victim	Type	Home Addre	ess						
Witness(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. POM Manuel Gutierrez	15714	948589	040 PCT						
2. POM Christian Garcia	29345	954847	040 PCT						
3. An officer			040 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. POF Brittany Moore	11846	958948	040 PCT						
2. POF Angie Rodriguez	20746	959139	040 PCT						
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nme	endation
A.POM Christian Garcia	Abuse: P	O Christian Garcia frisk	ked ^{§ 87(2)(b)}						
B.POM Manuel Gutierrez	Force: P(§ 87(2)(b)	O Manuel Gutierrez use	d pepper spray again	ıst					
C.POM Christian Garcia	Force: P(§ 87(2)(b)	O Christian Garcia used	physical force again	ıst					
D.POM Manuel Gutierrez	Force: P(§ 87(2)(b)	O Manuel Gutierrez use	d physical force agai	inst					
E. An officer	Force: A	n officer used a chokeho	old against \$87(2)						
F. An officer	Force: A	n officer restricted § 87(2)	s breat	thing	g.				
G.POM Christian Garcia		O Christian Garcia restri		S	3				
H.POM Manuel Gutierrez	Force: Postering	O Manuel Gutierrez rest g.	cricted § 87(2)(b)		S				

On February 13, 2016, at approximately 11:30 p.m., in front of Club Miami, located at 26
Bruckner Boulevard in the Bronx, a taxi driver called 911 to report that \$87(2)(b) had not
paid his fare. Officers Manuel Gutierrez, Christian Garcia, Angie Rodriguez, and Brittany Moore
of the 40 th Precinct responded to the scene. Security staff at Club Miami brought § 87(2)(b)
out of the club, and \$87(2)(b) discussed the taxi fare with the officers. PO Garcia frisked
(Allegation A). \$87(2)(b) was startled, and he pushed PO Garcia's hand
away from his body. Immediately after, PO Gutierrez pepper sprayed him (Allegation B). PO
Garcia and PO Gutierrez allegedly brought \$87(2)(b) to the ground (Allegations C and D).
An officer allegedly placed a knee on the back of \$87(2)(0) s neck, and \$87(2)(0)
could not breathe (Allegations E and F). PO Garcia and PO Gutierrez allegedly punched him to
get him to go inside of the police vehicle (subsumed in Allegations C and D). \$87(2)(6)
who could not see due to the pepper spray, was allegedly placed stomach-down across the back
seat of the vehicle (Allegations G and H). § $87(2)(6)$ was arrested and charged with § $87(2)(6)$
\$87(2)(g)
There is no video footage in this case.
This case was closed beyond the 90-day deadline because of officer scheduling issues.
Mediation Civil and Cuiminal Histories
Mediation, Civil and Criminal Histories
• This case was not eligible for mediation because §87(2)(b)
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
• On May 11, 2016, the New York City Comptroller's Office stated that no Notice of
Claim had been filed in regard to this incident (Board Review 11).
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
Civilian and Officer CCRB Histories
• \$87(2)(b) s mother, \$87(2)(b) filed this complaint, although she was not
• § 87(2)(b) s mother, § 87(2)(b) filed this complaint, although she was not
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 \$87(2)(b)
 \$87(2)(b)
 \$87(2)(b)

9, 2016, \$87(2)(b) another individual who was at Club Miami, was called, and he stated that he did not witness the interaction between \$87(2)(b) and the officers (Board Review 28). The bouncer outside of the club could not be identified because attempts to identify the bouncer through \$87(2)(b) the owner of Club Miami, were unsuccessful (Board Review 29).
Findings and Recommendations
Explanation of Subject Officer Identification
● § 87(2)(9)
None of the
officers interviewed acknowledged placing a knee on the back of his neck or seeing another officer placing a knee on the back of his neck (Board Reviews 5-8).
Allegations not pleaded
• § 87(2)(9)
Allegation A –Abuse of Authority: PO Christian Garcia frisked 887(2)(b)
Allegation B –Force: PO Manuel Gutierrez used pepper spray against \$87(2)(b)
It is undisputed that officers were called to the scene because §87(2)(6) had a dispute with a taxi driver and refused to pay the fare. It is also undisputed that PO Garcia frisked
§87(2)(b) pushed PO Garcia's hand away, and PO Gutierrez pepper-
sprayed § 87(2)(b)
stated that he, his girlfriend \$87(2)(b) her friend, known as \$87(2)(b) and his business partners, \$87(2)(b) and \$87(2)(b) took a taxi to Club Miami at 26
Bruckner Boulevard in the Bronx. The driver had gotten lost, and \$87(2)(b) felt the driver
was over-charging them. He offered half the fare, which the driver refused to take.
and his friends entered the club, and within five minutes, a bouncer asked him to come outside. [S87(2)(b)] was wearing a soft cast with a sling on his right hand due to a prior
injury; because he was taking painkillers, he was not consuming alcohol that evening.
walked toward the exit of the club, and he saw four or five uniformed
officers standing at the entrance. §87(2)(6) walked approximately ten yards to the right of
the door, and the officers stood next to him. PO Garcia asked \$87(2)(6) what had happened, and \$87(2)(6) began to explain that the taxi driver had overcharged him. The officers told
that the driver had told them that \$87(2)(6) had left the taxi without paying.
PO Garcia started to pat down the left side of \$87(2)(b) s waistband, where his jeans met
his jacket. PO Garcia had not told \$87(2)(b) that he was going to frisk him or said that he
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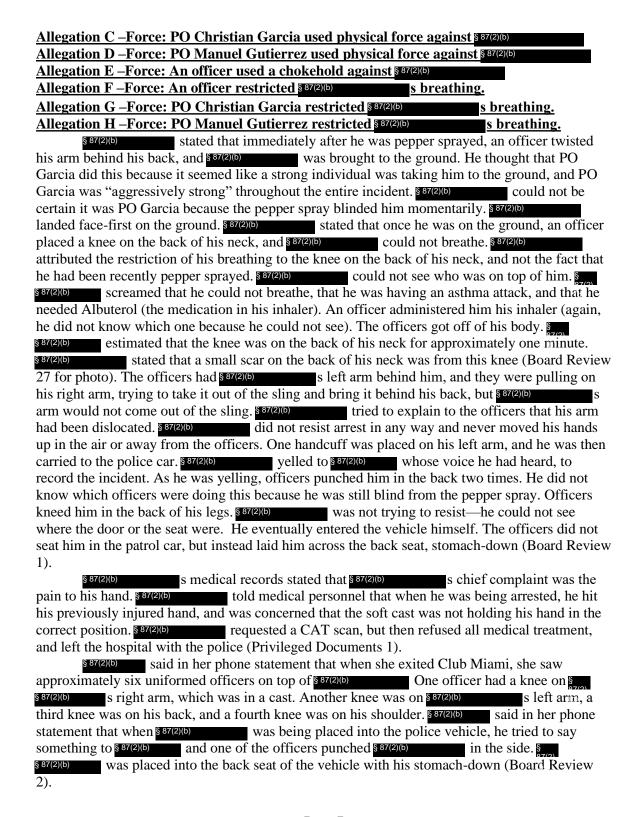
PO Gutierrez, PO Garcia, PO Rodriguez, and PO Moore had the same memo book entry: "Male stop refused to be frisked. Highly aggressive male had to be maced to be apprehended (Board Reviews 19-22). The AIDED report stated, "Suspect was maced and taken to Suspect RMA in hospital. Suspect has a broken wrist playing basketball" (Board Review 17).

An officer may only frisk an individual if he reasonably suspects that the individual is armed and dangerous <u>People v. De Bour</u> 40 N.Y.2d 210 (1976) (Board Review 23). A search of an individual must be incident to an actual arrest; an officer's possession of probable cause that could have led to an arrest, but did not, does not suffice <u>People v. Reid</u> 24 N.Y.3d 615 (2014) (Board Review 24). A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous <u>People v. Carney</u> 58 N.Y.2d 51 (1982) (Board Review 25).

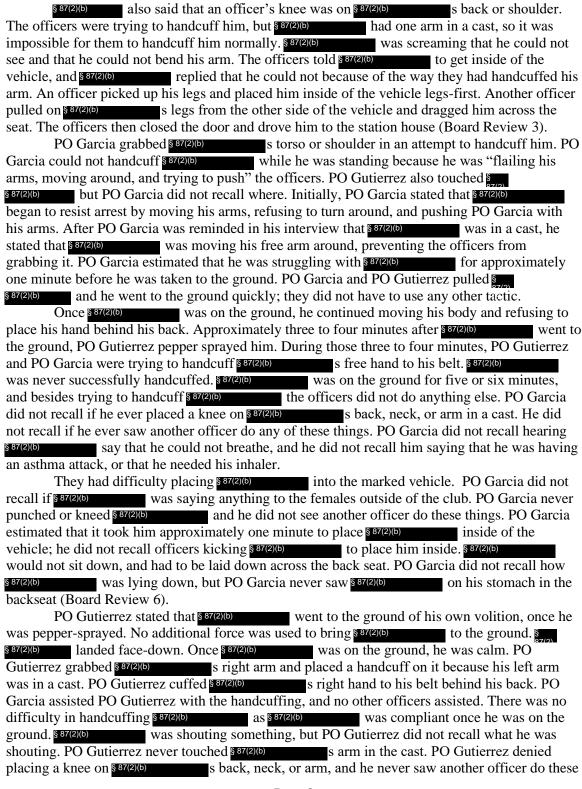
Patrol Guide 212-95 states that pepper spray may be used in arrest situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. Pepper spray shall not be used in situations that do not require the use of physical force (Board Review 26).

§ 87(2)(g)		
§ 87(2)(g)		

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stated that he could not breathe when he was on the ground, so PO
Gutierrez and PO Garica brought \$87(2)(b) to a standing position. PO Gutierrez attributed
his restricted breathing to the pepper spray. PO Gutierrez did not think he administered asthma
medication to \$87(2)(0) and he did not recall if \$87(2)(0) ever asked to use his
inhaler. PO Gutierrez estimated that \$87(2)(6) was on the ground for three seconds—just
long enough for PO Gutierrez and PO Garcia to handcuff him. PO Gutierrez requested an
ambulance to meet them at the 40 th Precinct station house because \$87(2)(b)
exited the club around the time that he was handcuffed and started to yell at the officers. PO
Gutierrez thought that the scene outside of the club was "too crazy," so he decided that it would
be better to have EMS come to the 40 th Precinct station house, which is approximately four
blocks away from Club Miami.
PO Gutierrez did not recall if there was any difficulty in placing \$87(2)(b) inside of
the police vehicle. §87(2)(b) was not yelling to the females, but he was complaining about
his eyes burning. PO Gutierrez held \$87(2)(b) on the bicep of his arm that was not in a cast,
while PO Garcia graphed \$87200 underneath his armoit and led him toward the vehicle
while PO Garcia grabbed \$87(2)(b) underneath his armpit and led him toward the vehicle. PO Gutierrez placed \$87(2)(b) into the vehicle. PO Gutierrez thought that he placed \$10(2)(1)
in a seated position, and that \$87(2)(b) then laid down on his side of his own
volition. PO Gutierrez never punched \$87(2)(6) in the back. \$87(2)(6) was never
placed face-down onto the back seat. PO Gutierrez never saw \$87(2)(b) on his stomach
inside of the vehicle at any point (Board Review 5).
PO Rodriguez stated that immediately after \$87(2)(6) was pepper sprayed,
was pepper sprayed, services went to the ground because he was bending over in an attempt to clean his eyes. PO
Rodriguez did not recall if he went to the ground on his own, or if officers used force to bring him
to the ground. Once \$87(2)(b) was on the ground he was placed in handcuffs. PO
Rodriguez did not recall who handcuffed \$87(2)(b) she did not have a clear view of \$7(2)(b) she did not have a cle
s hands because PO Garcia and PO Gutierrez were around him. PO Rodriguez
estimated that \$87(2)(5) was on the ground for approximately three minutes; during those
three minutes, the officers were trying to handcuff him. The officers were having difficulty
handcuffing \$87(2)(b) because he was wiggling his body. She never saw an officer place a
knee on the back of \$87(2)(b) say that he
could not breathe or that he had asthma. PO Garcia and PO Gutierrez lifted \$87(2)(6) and
walked him to a marked police vehicle. PO Rodriguez never saw officers punch or knee
to get him inside of the vehicle. PO Rodriguez did not see how §87(2)(b) was
placed inside of the vehicle because she was walking to another marked police vehicle that was
approximately three car lengths away from the vehicle that transported \$87(2)(b) She did
not see \$87(2)(b) inside of the vehicle, and she never saw him lying on his stomach in the
back seat (Board Review 7).
PO Moore stated that she was controlling the crowd outside of the club and was not
focusing on \$87(2)(b) When she did look at \$87(2)(b) he was on the ground, and PO
Garcia and PO Gutierrez each had one of his hands, and were trying to place him in handcuffs.
She never saw an officer with a knee on the back of \$87(2)(b) s neck, side, or arm that was
in a cast. §87(2)(6) never said that he could not breathe or that he had asthma. Either PO
Garcia or PO Gutierrez was trying to place him inside of the vehicle; she was not certain which
one. § 87(2)(b) kept trying to stand up instead of sit down and enter the police vehicle.
repeatedly stated that he was not going to the station house. §87(2)(b) entered
the vehicle after one of his female friends told §87(2)(b) to "just go." PO Moore did not
D

PO Moore was a inside. PO Moo \$87(2)(b) punch \$87(2)(b) Moore told the tolack to the stati	when he was being placed in the back. She ne female to leave, and then lon house. She did not see	arowd at the point that \$87(2)(b) approximately one and one-d inside of the vehicle. PO Never saw officers knee \$87(2)(b) PO Moore immediately enters	half car lengths away from Moore never saw an officer in the legs. PO wred the vehicle that took her was in when he was
Squad: 11			
Investigator: _			
	Signature	Print	Date
Squad Leader: _			
	Title/Signature	Print	Date
Reviewer:			
	Title/Signature	Print	Date